

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 23 OF 2013**

STATE

-v-

1. ILISONI WAQA
2. EPI NAVAKASILIMI
3. MACIU NACAUCAULEVU
4. WAISEA VULI
5. JONE SERUKALOU

**Counsel:** Mr. N. Niudamu for the State  
Mr. R. Vananalagi for 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Accused  
Ms. C. Choy for 2<sup>nd</sup> Accused  
Ms. S. Kant for the 5<sup>th</sup> Accused

**Dates of Hearing:** 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 9<sup>th</sup> and 10<sup>th</sup> of May, 2016

**Date of Ruling:** 11<sup>th</sup> May, 2016

**RULING ON VOIR DIRE**

1. The State seeks to adduce into evidence the cautioned interviews of the Accused made at the Rakiraki Police Station on 25<sup>th</sup> January, 2013.

2. The test of admissibility of all confessional statement made to a police officer is whether that was made freely and not as a result of threats, assaults or inducements made to the Accused by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under the Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the Prosecution can show that the suspect was not thereby prejudiced.
3. Accused object to the admissibility of their interviews on the following grounds:

#### GROUND OF VOIR DIRE FOR ACCUSED 1-5

- (a) That they were intentionally misled by the Police as to the nature of the allegations against them and when they were taken into custody they weren't aware of the reasons nor were they told of the reasons.
- (b) That they were forced and coerced by the Interviewing Officer to agree to what had already being written down in their caution interview and that they were assaulted and threatened whilst in Police custody.

#### GROUND OF VOIR DIRE FOR 5<sup>th</sup> ACCUSED

- (a) The confessions are involuntary since they have been obtained through verbal and physical assault, pressure, duress and force by police officer at the Rakiraki Police Station prior to and during the duration of his interview.
- (b) The confessions are involuntary since the accused was verbally, physically assaulted, pressured, threatened and intimidated by police officers from the Rakiraki Police Station during his caution interview and as a result the 5<sup>th</sup> accused became pressured and consequently confessed to the offending in his caution interview

(c) The 5<sup>th</sup> Accused was not given a chance to read his Caution Interview and also his Charge Statement nor was he read his Caution Interview and Charge Statement instead was only told to sign.

(d) That there was a breach of his right under the Judges Rule and Article 10(1) and 14(3) (g) of the International Covenant and Civil and Political Rights prior to and during his interview by the Police.

4. What I am required at this stage is to decide whether the interviews were conducted fairly and whether the accused gave the statements voluntarily. If I find that the confessions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews.
5. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
6. Now I look at the evidence presented at the trial within trial.

#### **CASE FOR THE PROSECUTION**

7. Prosecution called seven Police witnesses.

##### **Constable 3197 Paul**

8. On the 25<sup>th</sup> of January 2013, Cpl. Paul was based at Rakiraki Police Station as the Post Officer at Namarai Police Post. Around 4.10 in the morning he went to Nakorovou Village to arrest the accused persons in this case. Special Constable Josevata, Special Constable Manasa and Special Constable Paula Ravou also joined him.
9. They went to Jone Serukalou's house and asked Jone Serukalou's aunty, Karolina, to call Jone out. Paul told her that Jone Serukalou will be taken down to Rakiraki Police Station

for questioning with regard to an allegation of rape that has been lodged at Nalawa Police Station. Jone got in the vehicle.

10. After taking another suspect from the Village Headman's house in Nakorovou Village, they then headed to Nacara Settlement. Having informed Waisea Vuli and Epi Navakasilimi that police are looking for them, police team then went to Meci Nacaulevu's residence.
11. Paul went inside Meci Nacaulevu's house, whilst SC Josevata and SC Manasa were standing outside. He entered the house and sat down with Meci Nacaulevu's parents to explain to them that Meci will be taken down to Rakiraki Police Station for questioning with regard to an allegation of Rape that has been lodged at Nalawa Police Station.
12. On their way, they met Waisea Vuli and Epi Navakasilimi at the Nacara Junction. He got off the vehicle and explained to them that they will be taken down to Rakiraki Police Station for questioning with regard to the allegation of rape that has been lodged at Nalawa Police Station. Then Waisea Vuli and Epi Vakasilimi accompanied them.
13. Whilst they were heading to Rakiraki Police Station, Village Headman of Nakorovou Village, called Paul and informed him that one of the suspects, namely, Ilisoni Waqa was with him at Nakorovou Village and waiting for Police to be picked up.
14. Upon receiving this information, they stopped over at Nalawa Police Station and handed the suspects over to Corporal 2319 Levani at the Nalawa Police Station. Paul and Manasa went back to Nakorovou Village to get Ilisoni Waqa.
15. At the Village Headman's house Paul explained to Ilisoni Waqa that he will be taken down to Rakiraki Police Station for questioning with regard to an allegation of rape. Ilisoni Waqa got in the vehicle. They then went to Nalawa Police Station where the rest of the suspects were.

16. During the arrest and at the time they were escorted down to Nalawa Police Station, they were treated nicely. At the Nalawa Police Station, he escorted Meciū Nacaucaulevu, Waisea Vuli and Jone Serukalou to the Rakiraki Police Station.
17. Upon arriving at the Rakiraki Police Station, he handed the suspects over to Rakiraki Police Station and went for a briefing. Police vehicle went back to pick the rest of the suspects from Nalawa Police Station.
18. After the briefing, he started the interview of Meciū Nacaucaulevu at the Crime Office of the Rakiraki Police Station. Interview commenced at 13.15 hrs. and ended at 15.10 hrs. It was conducted in iTaukei language under caution. No one else was present to witness the interview. Before the commencement, accused did not complain of anything. He was given the opportunity to consult a lawyer. Before or during the interview, no assault took place. No inducement, threat or promise held out to get an admission. Before the interview, he was served with his meals.
19. After the interview of Meciū Nacaucaulevu, he took a short break and started the interview of Ilisoni Waqa at 16.05 hrs. at the Crimes Office. Interview was under caution. No one else was present to witness. Before the commencement, or during the interview, he did not complain of anything. Accused was given the opportunity to consult a lawyer. Before or during the interview he was not threatened. No inducement or promise given. He was not intimidated in anyway to make a statement. He appeared healthy and normal. Interview was concluded at 19.23 hrs. Accused was given sufficient breaks during the interview. His rights were observed. At the time of the arrest and right up to the interview, he was not assaulted. No injuries were present. If they had any injury, Station Orderly would have noticed and taken them to the hospital.
20. Under cross examination, he admitted that the date appeared in his statement is incorrect and that he made a mistake.

21. When he was shown the statement of Losena Likutaiba, mother of the 3<sup>rd</sup> accused, he admitted taking her statement on the 25<sup>th</sup> of January 2013 when he went to Meciú's house in Nacara settlement. He denied fabricating that statement and asking her to leave the DPP's office when he met her on the 2<sup>nd</sup> of May, 2016.
22. He admitted that, in the Station Diary entry (67) of the Rakiraki Police Station, there is a difference in the name of the accused that he brought in. He said that it is a mistake made by the Station Orderly in writing down the names.
23. He denied stopping the vehicle somewhere between the village and the Kings Road and assaulting the 1<sup>st</sup> accused's on his legs and ribs with a baton. He also denied punching Meciú on his head and ribs during the interview and intimidating and warning other accused to admit the allegation by making them to witness the punching on Meciú. He denied having used a baton on 1<sup>st</sup> accused's ribs during the interview.

#### **Special Constable Josevata**

24. When he was stationed at Nalawa Police station, he was part of the team led by PC Paul, Manasa and Eferemo that arrested the accused on 25<sup>th</sup> of January, 2013. He denied that the accused were assaulted or intimidated by him or any other officer at the arrest or during transportation.

#### **Corporal 2319 Levani**

25. On the 25<sup>th</sup> of January 2013, he was stationed at the Nalawa Police Station. He acted as the investigating officer of this case and received the accused except the first accused Ilisoni Waqa from Constable Paul and his team.
26. After handing over the suspects to him, Constable Paul went back to Nakorovou village to get the first accused Ilisoni Waqa. By 9.00 a.m, suspect Waka was also brought in. When these suspects arrested they did not have any injuries and did not complain of

anything. They were all kept in the Police Bure, a recreational area. They were taken down in two groups to Rakiraki Police Station for questioning. Ilisoni Waqa and Epi Vakasilimi (1<sup>st</sup> & 2<sup>nd</sup>) were taken in the second trip. They were not assaulted or threatened on their way down to Rakiraki Police Station.

27. Under cross examination, he admitted visiting the victim and some of the witnesses including Tevita Rakai and his wife Losena on the 24<sup>th</sup> of January, 2013. However, he did not recall whether their statements were recorded. He also admitted seeing Losena at the DPP's Office on Monday before coming to Court. Losena was heard stating that her statement was not taken by any police officer. Then he showed her signature to Losena and told that her statement was recorded by Constable Paul on the 25<sup>th</sup> of January 2013. She denied giving such a statement.

**Constable Sovaia**

28. Sovaia served in the Uniform Branch of the Rakiraki Police Station. On the 25<sup>th</sup> of January 2013, she was the Station Orderly who recorded all movements in the police station, in and out. Around 5.12 p.m., Nalawa police vehicle brought in 3 suspects, (3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused) from the Nalawa Police Station. PC Paul handed them over to her. No one complained to her of anything. She did not notice any injuries on them. If they had complained of injuries she would not have accepted them and would have taken them to the hospital.
29. She admitted that the entry (number 68) she made regarding the suspects brought in at that time is not accurate and is a mistake in a busy time. She referred to entry number 95 of the station diary and said that meals were provided or ready at the station by 1300 hours. She made the entry earlier but the meal was served at 1300 hours. She also translated the interview of Epi Navakasilimi (accused no 2) from Fijian Language to English.

30. Under cross examination, on a request of the Defence Counsel for 1, 3<sup>rd</sup> and 4<sup>th</sup> accused, she drew the layout of the Rakiraki Police Station (DEX1). Referring to her own sketch, she said that the interview was held in the crime office off the main road.

**Constable Waisea Koro**

31. He kept the cell book at the Rakiraki Police Station. On the 25<sup>th</sup> of January 2013 seven suspects were brought in from Nalawa fleet. Referring to the injuries column, he said that none of the suspects had any injuries on them. He denied threatening and forcing Waisea Vuli to admit the offence.

**Constable Petero Nakorolevu**

32. He was attached to the CID at the Rakiraki Police Station. On the 25<sup>th</sup> January 2013, he interviewed Epi Vakasilimi (2<sup>nd</sup> accused) and Waisea Vuli (4<sup>th</sup> accused) under caution. 2<sup>nd</sup> accused's interview commenced at 6.10 p.m. in the afternoon. It finished at 8.15 p.m. Waisea Vuli's interview commenced at 1.20 p.m. and concluded at 4.45 p.m.
33. Apart from the accused, no one else was present with him during each interview. Before the commencement of the interview, accused did not complain of anything. Accused were given the right to consult a lawyer which he waived. During the interview no assault or threat took place. No inducement or promise offered.
34. Under cross examination, he denied threatening Waisea Vuli during his interview and warning him that if he did not admit, chili will be rubbed on his body. He denied conducting the interview of the 2<sup>nd</sup> accused on the corridor while two other police officers watching him to instill fear. He also denied PC Paul forcing him to admit the allegation and striking the 2<sup>nd</sup> accused with a police baton.



### **Constable Manasa**

35. When he was serving at Nalawa Police Station, Constable Manasa joined PC Paul, PC Josevata, and PC Ramo to arrest the accused. PC Paul explained the reason of arrest before taking the accused into custody.
36. Near the Monasavu settlement, Waisea Vuli and Epi Vakasilimi were arrested beside the road. PC Paul got off the vehicle and explained to them about the report. They were properly looked after until they reached the Nalawa Police Station. Upon reaching Nakorovou, Ilisoni Waqa was taken from the village headman's house. PC Paul explained the reason for arrest and brought him down to the Nalawa Police Station.
37. Accused are related to him as his immediate family members. Under cross examination, he denied that he had assisted Paul in punching up Ilisoni Waqa between the village and the main highway.

### **Constable Solomone Suluka**

38. When Suluka was attached to the uniform branch at Nalawa Police Station, he interviewed Jone, the 5<sup>th</sup> accused, on the 25<sup>th</sup> of January 2013 at the Crime Interview Room. No one else was present to witness the interview. Before the commencement of the interview, accused did not complain to him of anything. Accused did not exercise his right to consult a lawyer. Before or during the interview, no inducement or promise offered and threat made to the accused. Interview commenced at 13.22 and finished at 15.52
39. Under cross examination, he denied interviewing the 5<sup>th</sup> accused on a corridor. He disputed the accuracy of the sketch plan prepared by Sovaia and said that the interviewing room is not depicted in the sketch. He also denied that, while he was interviewing the 5<sup>th</sup> accused, Meciu was also being interviewed by Paul. He denied accompanying Jone to show how Meciu being assaulted by Paul. He denied warning Jone

that if he did not say 'yes' to the questions the same thing will happen to him. He also denied punching Jone on his neck.

## **CASE FOR THE DEFENCE**

### **Jone Serukalou – 5<sup>th</sup> Accused**

40. On the 25<sup>th</sup> of January 2013, three policemen came to his aunt Karolina's house around 4 in the morning. His aunty woke him in up. Offices did not inform the reason for arrest. He was handcuff.
41. On their way from Nakorovou to Nacara, Manasa informed the reason for arrest and started assaulting verbally. They arrived at the Nalawa Police Station and was kept in the Police Bure with Suka, Manu and Epi, Waisea.
42. Paul took them to Rakiraki Police Station. On their way, Paul kept on telling him to say yes to the allegation. They had lunch at Rakiraki Police Station. He was taken to the porch and interviewed. Waisea was also interviewed at the same time by another officer on the same porch 5 meters apart.
43. They took both him and Waisea to the room where Meciui was being interviewed by Paul. Paul was punching Meciui's head and chest and was telling him to say 'yes'. Paul also threatened them. He was frightened. Answers were not given voluntarily in the interview. I was not read back. Police officers chased her mother away before the interview.
44. Under cross examination, he denied answering the questions voluntarily. He did not say a single word to the interviewing officer. His rights were never explained by the interviewing officer.

### **Ilisoni Waqa - 1<sup>st</sup> Accused**

45. On the 25<sup>th</sup> of January 2013, around 9.00 a.m., he was arrested by Paul and Manasa at Nakorovou village. Manasa handcuffed him loaded him to the vehicle without explaining the reason for arrest.
46. On the way, Paul explained the reason for arrest. They stopped the vehicle in the middle of the road at Veidakai. Paul told him to get off. Manasa came and pulled his hand. When he got off, Paul told him to put his head inside the vehicle. Manasa pulled his legs. Paul was hitting his sole and feet, up to the knees, with a Police Baton. Then he punched on his ribs. Assault took place for one hour in the middle of the road. Paul interviewed him in a room at the Rakiraki Police Station. He had lunch after the interview.
47. Under cross examination, Waqa said that his admissions were not voluntary given. Paul nudged his ribs with a baton and threatened him during the interview. He wanted his uncle and aunt to be present. Paul did not give that right. He did not make any request to the Magistrate that he be taken to a hospital.
48. Under Cross-examination, he admitted receiving a message from the Village Headman that the Police were looking for him. He was waiting for the Police to come. No vehicle was seen running on the main road while he was being beaten. During the interview he was shouting whilst being beaten. His aunty and uncle did not hear the noise. He was limping to the Magistrates Court. Magistrate did not ask why he was limping. He did not complain to the Magistrate.

### **Epi Vakasilimi 2<sup>nd</sup> Accused**

49. Epi's cousin told him that Police Officers were looking for him. Waisea also came to his place. They were waiting for the Police Officers to come. Police officers came and handcuffed him with without informing the reason for arrest.

50. After having lunch, he was interviewed by officer Petero on the porch at the Rakiraki Police Station while two other officers watching. Whilst being questioned, Officer Paul came and told him to say 'yes' to the allegation. He took the baton and nudged it on his ribs. He was frightened. He did not sign the interview voluntarily. Under cross examination, he said that he was kept with Waqa and was served with lunch before the interview. He denied the allegation at the interview.

**Maciu Nacaucalevu 3<sup>rd</sup> Accused**

51. On the 25<sup>th</sup> of January, 2013, he was arrested at home by police team led by Paul. Reason for arrest was not explained on arrest. Paul at that time did not take a statement from his mom Losena.
52. At the Rakiraki Police station, he was taken to a room by Paul for the interview. During the interview, Paul nudged his ribs and forced him to say 'yes to the allegation. Paul called Jone and Waisea to watch how he was being assaulted.

**Waisea Vuli - 4<sup>th</sup> Accused**

53. On the 25<sup>th</sup> of January 2013, Police team arrested him without explaining the reason. Officer Paul verbally abused him. At the Rakiraki Police Station, he was interviewed on the porch. He saw Paul punching Meciu while being interviewed. Paul was punching on his head and ribs. He denied giving admissions voluntarily.
54. Under Cross-examination, he said that Paul only used hands and no Police baton was used to beat Meciu on his ribs.

**Losena Rakai**

55. Police wanted his son Meciu to accompany them. They did not explain why they were taking Meciu. Officer Paul did not take a statement from her on the 25<sup>th</sup>. She denied the

signature appeared in the statement. Before the hearing, she was summoned to the DPP's office as a State witness and shown the statement. She denied having made such a statement to police. Then she was asked to leave. She admitted that her personal details appeared in the statement are correct. She also admitted that his son is also known as 'Tubuna'.

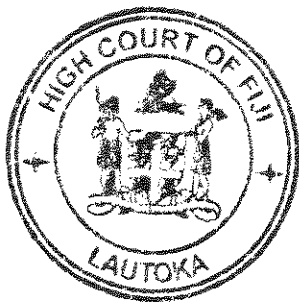
## ANALYSIS

56. I find that the evidence of the police officers to be consistent and plausible. There are minor inconsistencies in their evidence. However, none of them are material and are not sufficient for me to reject the version of the Prosecution.
57. Paul is the officer who played the main role in arresting, transporting and interviewing the accused. He is also the officer against whom most of the allegations were made by the accused. Therefore, I place much emphasis on his evidence in my analysis of the evidence of the Prosecution case.
58. Paul maintained that the accused were properly informed of the reason for their arrests. Officers who assisted Paul to arrest the accused confirmed his evidence without major contradictions. Some of the accused (3<sup>rd</sup> and 5<sup>th</sup> accused) had been arrested from their homes in the presence either of their parents or relatives. 1<sup>st</sup> accused was arrested at the Village Headmen's house. He was quite aware, having been informed by the Village Headman beforehand, that police were looking for him. 2<sup>nd</sup> and 4<sup>th</sup> accused also had prior knowledge that police were looking for them. According to their own evidence 2<sup>nd</sup> and 4<sup>th</sup> accused were waiting at the Nacara Junction to be arrested.
59. Accused had no reason to be misled or tricked by police officers. All of them said that the police officers informed them that they were being taken for questioning in respect of a rape allegation. They all knew the reason for their arrest and the purpose of the interview by the time their interviews commenced. Therefore, there was no prejudice caused to the accused.

60. Officers who arrested the accused properly cautioned them and afforded their rights guaranteed to an accused under the Constitution. They had been given breaks to rest and meals before the the interviews commenced. Only the 1<sup>st</sup> accused said that he was not given his meal before the interview. His evidence is not supported by evidence of others including that of Epi who was kept in the same room. They confirmed that meals were provided before their respective interviews. Station orderly confirmed that lunch had been dispatched to the station by 1 p.m. and served to the accused. I am satisfied that the Police officers conducted the interviews fairly.
61. Defence Counsel highlighted some discrepancies between the Station Diary and the evidence adduced at the hearing as to the names and the time the accused were brought in to the Rakiraki Police Station. They also challenged the veracity of an entries made at the Rakiraki Police Station. Defence Counsel took a considerable time and effort to convince this Court that the interviews were not in fact conducted at the palaces where the police offices were referring to in their respective evidence.
62. However, there was no dispute that the accused were taken to the Rakiraki Police Station on the 25<sup>th</sup> January, 2013 and their interviews were conducted on the same day. Therefore, those inconsistencies or contradictions did not materially affect the credibility of the prosecution case.
63. Defence counsel used a sketch plan prepared by the Station Orderly, Sovaia, to describe the layout of the Rakiraki Police Station and the exact places where the respective interviews took place. Accuracy of that sketch plan itself was called into question when her own colleagues disagreed with the layout as depicted in the sketch plan. S.O. Sovaia had not been present at any of the interviews. Therefore, she is not in a position to say exactly where the interviews were conducted. Accused themselves contradicted each other as to the place of their respective interviews. Therefore, those so called inconsistencies had no negative impact on the credibility of the Prosecution version.

64. Police officers consistently maintained that no assault or intimidation took place before or during the interviews. 1<sup>st</sup> accused, on the other hand, said that he was assaulted by Officer Paul whilst being escorted to the Nalawa Police Station and also during the interview. According to him, assault had taken place during transportation in broad daylight in the middle of a main road leading up to the Kings Highway. The torture session had lasted nearly for an hour. However, there is no evidence that 1<sup>st</sup> accused had visible injuries as a result of the alleged assault. It is highly improbable that police officers would resort to torture in public, blocking a main road, exposing themselves to a risk of criminal liability. Further, the Cpl. Manasa who assisted Paul in torturing the accused is none other than one of his close relatives. 1<sup>st</sup> accused's version is hardly believable.
65. According to evidence of the Defence, Meciui had been assaulted by Paul on his chest, ribs and head. Other accused had been brought, as a fear tactic, to the room where Meciui was being interviewed and assaulted so that others can also be intimidated. At least two accused confirmed that 3<sup>rd</sup> accused's parents were present at the Rakiraki Police Station whilst the interviews were being conducted. 3<sup>rd</sup> accused's parents are related to the first accused also. According to the 1<sup>st</sup> accused, he had even shouted in pain. There is no evidence that Meciui's parents had received a complaint from any of the accused or any such complaint had been lodged with anybody. It is highly improbable that policemen would resort to torture when they know that parents of the accused are around.
66. Court is unable to accept the evidence of the Defence that the accused succumbed to intimidation and gave their interviews involuntarily. If they were in fact intimidated or forced to confess, using various types of fear tactics and torture, Epi Navakasilimi's situation cannot be an exception. According to the version of the Defence, Epi had gone through the same ordeal at the hands of the police before and during the interview. However, the record of his interview shows that he had positively maintained his denial of the allegation right throughout his interview. That bears clear testimony to the fact that the conditions claimed by the accused were not present and the interviews were voluntarily given.

67. Defence arguments placed much reliance on the evidence of Losena. She is undoubtedly an interested witness. She is the mother of the third accused who is facing a serious charge in this case. She has every reason to save skin of his son and other accused who are related to her. Her maiden name correctly appears in the statement that she has now chosen to disown. The nickname of his son, 'Tubuva', and other personal information privy to her appears in the statement. This information cannot be known to the police officers unless they were provided by Losena herself. Under these circumstances, her evidence cannot be acted upon to discredit the evidence of the Prosecution.
68. Evidence called by the Defence was inconsistent and implausible. Defence failed to create any doubt in the Prosecution case.
69. Prosecution proved that the admissions were given voluntarily. It also proved that the interviews were conducted fairly without violating constitutional rights of the accused. I am satisfied that the accused gave their interviews voluntarily.
70. Therefore, I hold cautioned interviews of the accused to be admissible in evidence.



  
**Aruna Aluthge**  
**JUDGE**

**At Lautoka**  
**11<sup>th</sup> May, 2016**

**Counsels:**      **Office of the Director of Public Prosecution for State**  
                         **Office of the Legal Aid Commission for Accused**